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JAN 10 2005

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VILLAGE OF LAKE BARRINGTON, CUBA)
TOWNSHIP, PRAIRIE RIVERS NETWORK,)
SIERRA CLUB, BETH WENTZEL and)
CYNTHIA SKRUKRUD,)

Petitioners,)

v.)

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY and VILLAGE OF WAUCONDA,)

Respondents.)

PCB 05-55
(3rd Party NPDES Permit
Appeal)

SLOCUM LAKE DRAINAGE DISTRICT OF LAKE)
COUNTY, ILLINOIS,)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY and VILLAGE OF WAUCONDA,)

Respondents.)

PCB 05-58
(3rd Party NPDES Permit
Appeal)

AL PHILLIPS, VERN MEYER, GAYLE DEMARCO,)
GABRIELLE MEYER, LISA O'DELL, JOAN LESLIE,)
MICHAEL DAVEY, NANCY DOBNER, MIKE)
POLITO, WILLIAMS PARK IMPROVEMENT)
ASSOCIATION, MAT SCHLUETER, MYLITH PARK)
LOT OWNERS ASSOCIATION, DONALD KREBS,)
DON BERKSHIRE, JUDY BRUMME, TWIN POND)
FARMS HOMEOWNERS ASSOCIATION, JULIA)
TUDOR and CHRISTINE DEVINEY,)

Petitioners,)

v.)

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY and VILLAGE OF WAUCONDA,)

Respondents.)

PCB 05-59
(3rd Party NPDES Permit
Appeal)
(Consolidated)

NOTICE OF FILING


Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 West Randolph Street
Chicago, IL 60601

Bradley P. Halloran
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 West Randolph Street
Chicago, IL 60601

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board an original and four (4) copies the **RESPONSE TO MOTION FOR SANCTIONS AND TO COMPEL** of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: 
Sanjay K. Sofat, Assistant Counsel
Division of Legal Counsel

Dated: January 7, 2005
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
(217) 782-5544

THIS FILING PRINTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JAN 10 2005

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 ASSOCIATION, MAT SCHLUETER, MYLITH PARK)
 LOT OWNERS ASSOCIATION, DONALD KREBS,)
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RESPONSE TO RESPONSE TO MOTION FOR SANCTIONS AND TO COMPEL

NOW COMES, Respondent, the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by one of its attorneys, Sanjay K. Sofat, Assistant Counsel and Special Assistant Attorney General, and pursuant to 35 Ill. Adm. Code 101.500, 101.502, 101.504, 101.614, 101.616, and 101.618, 101.800, 101.802, the Illinois Code of Civil Procedures, the Illinois Supreme Court Rules, and the Hearing Officer’s Order dated December 15, 2004, and hereby submits its Response to the Slocum Lake Drainage District of Lake County and the Resident Group’s Motion for Sanctions and to Compel. In support of its Response, the Illinois EPA states as follows:

1. On September 17, 2004, Village of Lake Barrington, Cuba Township, Prairie Rivers Network, Sierra Club, Beth Wentzel, and Cynthia Skrukrud filed a third party permit appeal with the Board pursuant to 415 ILCS 5/40(e)(1) and 35 Ill. Adm. Code 105.204(b).

2. On September 27, 2004, Slocum Lake Drainage District ("Slocum District") of Lake County, Illinois filed a Section 40(e) petition with the Board. Also, on September 27, 2004, Al Phillips, Vern Meyer, Gayle Demarco, Gabrielle Meyer, Lisa O'Dell, Joan Leslie, Michael Davey, Nancy Dobner, Mike Politio, Williams Park Improvement Association, Mat Chlueter, Mylith Park Lot Owners Association, Julia Tudor, and Christine Deviney ("Resident Group") filed a Section 40(e) petition with the Board.
3. The Agency's permitting decision in this case only pertains to the Village of Wauconda's request to expand its treatment plant design average flow discharge from 1.4 million gallons per day ("MGD") to 1.9 MGD during Phase I and to 2.4 MGD in Phase II.
4. This modified permit issued on August 23, 2004, will expire on November 30, 2005.
5. The Agency made its decision to issue the modified permit pursuant to Section 39 of the Act.
6. The Slocum District and the Resident Group appeal the Agency's decision to grant the Village of Wauconda's request to modify its National Pollutant Discharge Elimination System ("NPDES") permit, IL 0020109.
7. Pursuant to 35 Ill. Adm. Code 105.116, the Agency Record is to be filed with the Board within thirty (30) days after receipt of the petition. The Agency Record was timely filed with the Board and consists of approximately 2262 pages.
8. On December 13, 2004, the Illinois EPA filed a motion for leave to amend its Record to include the transcript of the NPDES permit information hearing as part of the Agency Record.

9. On December 15, 2004, the Hearing Officer granted the Agency's motion to amend its record.
10. On December 27, 2004, the Agency received the Slocum District and the Resident Group's combine motion for sanctions and to compel.
11. Section 105.212(b) of the Board regulations defines what must be included in the Agency record. Specifically it provides that, [t]he record must include:
 - i) Any permit application or other request that resulted in the Agency's final decision;
 - ii) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the permit application;
 - iii) The permit denial letter that conforms to the requirements of Section 39(a) of the Act or the issued permit or other Agency final decision;
 - iv) The hearing file of any hearing that may have been held before the Agency, including any transcripts and exhibits; and
 - v) Any other information the Agency relied upon in making its final decision.
12. To satisfy the requirements of Section 105.212, the undersigned attorney reviewed the files maintained by the Bureau of Water.
13. Also, the undersigned attorney asked the Agency staff to provide emails related to the Agency's final decision on the Village of Wauconda's request to modify its NPDES permit. To meet this request, the Agency staff performed a universal search on their computers using the word "Wauconda." This search generated all those documents on their computers that contained the word "Wauconda" in them. The undersigned attorney reviewed all the emails provided by the Agency staff and found that not all

emails generated by the universal search were related to the Agency final decision on the Village of Wauconda's request to modify its permit.

14. The undersigned attorney reviewed and sorted the emails that were related to the Village of Wauconda's permit application and the Agency's decision to issue the NPDES permit.
15. The documents that are not considered as part of the Agency record could be classified into the following groups: i) Attorney-Client Privileged documents; ii) Documents dated after August 23, 2004; and iii) Documents not related to the Village of Wauconda's permit application and the Agency's final decision on the Village's request.
16. Section 7 of the Illinois Environmental Protection Act protects the disclosure of the Agency attorney's work product. Therefore, pursuant to Section 7 of the Act, all documents containing attorney-client information are privileged and thus are exempt from disclosure.
17. Section 40(e)(3) of the Illinois Environmental Protection Act provides that the Board shall hear the petition "exclusively on the basis of the record before the Agency." 40 ILCS 5/40(e)(3). As the Village of Wauconda's permit was issued on August 23, 2004, any document dated after the Agency's final decision could not have been relied upon by the Agency in making its final decision. Therefore, pursuant to Section 40(e)(3) of the Act, all documents that are dated after August 23, 2004, must not be considered as part of the Agency record.
18. The attorneys for the Slocum District and the Resident Group reviewed the documents belonging to the third classification group on December 17, 2004. After the review, the attorneys submitted a list of forty-seven (47) documents that they

believed should be part of the Agency record. Attachment A provides the Agency's detailed response to each of the requested documents.

19. As is clear from the reasons provided in the discussion above and the reasons stated in the Attachment A, the record before the Board, after the filing of additional documents, is now complete and meets all the requirements of the Act and Section 105.212(b) of the Board regulations.
20. The Slocum District and the Resident Group's demand to produce documents contained in all folders reviewed on December 17, 2004, is outside the mandates of both the Act and the Board regulations.
21. Part of their demand is irrelevant to this permit appeal and goes well beyond the requirements of Sections 39 and 40(e)(3) of the Act.
22. Part of the Slocum District and the Resident Group's demand is irrelevant to the permit appeal because neither the Agency is required by the Act to consider all violations records nor did it.
23. Further, as the Act specifically requires the Board to hear the petition "exclusively on the basis of the record before the Agency", demanding the introduction of documents that were not considered by the Agency during the permitting decision process would not only be inconsistent with the requirements of the Act but also be a waste of the Board's valuable time.
24. The Agency urges the Hearing Officer and the Board to DENY the Slocum District and the Resident Group's Motion for Sanctions and to Compel. The Agency further urges the Hearing Officer and the Board to bar the Slocum District and the Resident Group from seeking information that is clearly outside the mandates of the Act and the Board regulations.

WHEREFORE, for the reasons stated above, the Illinois EPA hereby respectfully requests that the Hearing Officer and the Board to TAKE NOTICE of the documents attached and DENY the Slocum District and the Resident Group's Motion for Sanctions and to Compel.

Respectfully Submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: _____

Sanjay K. Sofat
Assistant Counsel
Division of Legal Counsel

DATED: January 7, 2005

Illinois Environmental Protection Agency
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Attachment A

ILLINOIS EPA'S RESPONSE TO PETITIONER'S REQUEST FOR SANCTIONS AND TO COMPEL DOCUMENTS

1. Missing first page of letter from Alan Keller.
Agency response: This document already exists in the Record. Complete signed letter is on pages 2195-2196.
2. Memorandum dated August 14, 2003, from Alan Keller to Jessica Pickens.
Agency response: This document already exists in the Record. See pages 1757-1758.
3. "Contents of an Engineering Report" Attachment A (35 Ill. Adm. Code 370.210) and letter dated July 18, 2002, from Thomas McSwiggin to Huff & Huff.
Agency response: This document already exists in the Record. See pages 300-302.
4. Memorandum dated and faxed August 3, 2004, from Howard Essig to Don Netemeyer.
Agency response: This document already exists in the Record. See pages 2178-2179.
5. E-mail dated July 6, 2004, 4:31 p.m., from Bruce Yurdin to Marcia Willhite.
Agency response: This document already exists in the Record. See pages 2164-2167.
6. E-mail dated June 16, 2004, 8:11 a.m., from Gregg Good to Toby Frevert and others.
Agency response: This document already exists in the Record. See pages 2142-2143.
7. E-mail dated September 24, 2003, 1:28 p.m., from Al Keller to Toby Frevert and others.
Agency response: This document already exists in the Record. See page 1783.
8. E-mail dated July 29, 2004, 3:17 p.m., from Renee Cipriano to Connie Tonsor.
E-mail dated July 29, 2004, 2:19 p.m., from Connie Tonsor.
Agency response: Attorney-client privilege document.
9. Memorandum dated February 6, 2004, from Bill Hammel to Al Keller and others.
Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is a news clip and the Agency did not rely upon this information in making its final decision.
10. E-mail dated August 24, 2004, 11:11 a.m., from Toby Frevert to Mark Pfister.
E-mail dated August 24, 2004, 11:04 a.m., from Mark Pfister.
E-mail dated August 24, 2004, 10:03 a.m., from Mark Pfister.

Agency response: As the Agency issued the Village of Wauconda's NPDES permit on August 23, 2004, this information could not have been relied upon by the Agency in making its final decision.

11. E-mail dated October 2, 2003, 9:37 a.m., from Connie Tonsor to Renee Cipriano.
Agency response: Attorney-client privilege document.
12. E-mail dated July 31, 2003, 3:32 p.m., from Chris Kallis to Toby Frevert and others.
Agency response: The attached memo already exists in the Record on pages 1744-1746. The Illinois EPA will supplement the Record with the requested e-mail.
13. E-mail dated June 13, 2003, 9:50 a.m., from Rick Cobb to Renee Cipriano and others.
Agency response: Part of the e-mail already exists in the Record on page 2. The Illinois EPA will supplement the Record with the requested e-mail.
14. E-mail dated July 22, 2003, 1:41 p.m., from Chris Kallis to Marcia Willhite.
E-mail dated July 22, 2003, 11:39 a.m., from Marcia Willhite.
E-mail dated July 22, 2003, from Chris Kallis.
Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to an enforcement meeting discussion with the Attorney General's Office and the Agency did not rely upon this information in making its final decision.
15. Wauconda Permit Responsiveness Summary –Mar/Apr 04.
Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is a partial draft of the responsiveness summary. Note that the Agency's final Responsiveness Summary document is part of the Agency Record.
16. E-mail dated October 22, 2003, 9:12 a.m., from Connie Tonsor to Roger Callaway and others.
Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to an enforcement related matter discussion with the Compliance Assurance Section and the Agency did not rely upon this information in making its final decision.
17. E-mail dated August 2, 2004, 8:25 a.m., from Chris Kallis to Scott Twait.
E-mail dated July 30, 2004, 11:01 a.m., from Scott Twait.
Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to odor complaints from the citizens and the Agency did not rely upon this information in making its final decision.
18. E-mail dated June 25, 2004, 11:28 a.m., from Marcia Willhite to Bruce Yurdin and others.
E-mail dated June 23, 2004, 12:11 p.m., from Gregg Good.
E-mail dated June 23, 2004, 10:42 a.m., from Marcia Willhite.

Agency response: Part of the e-mail already exists in the Record on page 2154. The Illinois EPA will supplement the Record with the requested e-mail.

19. E-mail dated June 23, 2004, 2:44 p.m., from Lalit Sinha to Toby Frevert and others.
Agency response: Part of the e-mail already exists in the Record on page 2154, or in e-mail dated June 25, 2004, 11:28 a.m., to be added to the Record (see above). The Illinois EPA will supplement the Record with the requested e-mail.
20. E-mail dated November 4, 2003, 8:59 a.m., from Marcia Willhite to Renee Cipriano and others.
E-mail dated November 3, 2003, 5:03 p.m., from Renee Cipriano.
Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to the Director's request for status update and the Agency did not rely upon this information in making its final decision.
21. E-mail dated September 24, 2003, 4:08 p.m., from Toby Frevert to Connie Tonsor.
Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to radium rulemaking discussion and the Agency did not rely upon this information in making its final decision.
22. E-mail dated September 23, 2003, 4:17 p.m., from Blaine Kinsley to Connie Tonsor.
Agency response: Part of the e-mail already exists in the Record on page 1783. The Illinois EPA will supplement the Record with the requested e-mail.
23. E-mail dated September 15, 2003, 11:45 a.m., from Mike Garretson to Dennis McMurray.
Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is a list of municipal sanitary districts wastewater facilities and the Agency did not rely upon this information in making its final decision.
24. E-mail dated October 17, 2003, 9:41 a.m., from Chris Kallis to Renee Cipriano and others.
Agency response: Part of the e-mail already exists in the Record on page 1807. The Illinois EPA will supplement the Record with the requested e-mail.
25. Draft Justification for Changing Water Quality Standards for Radium, February 14, 2003.
Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to discussion on changing water quality standards for radium and the Agency did not rely upon this information in making its final decision.
26. E-mail dated September 25, 2003, 1:18 p.m., from Deborah Williams to Scott Phillips and Connie Tonsor.
E-mail dated September 25, 2003, 11:11 a.m., from Connie Tonsor.

Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to radium rulemaking discussion and the Agency did not rely upon this information in making its final decision.

27. E-mail dated February 17, 2004, 10:05 a.m., from Chris Kallis to Roger Callaway and others.

Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to reporting of raw sewage overflow from the plant to Compliance Assurance Section and the Agency did not rely upon this information in making its final decision.

28. E-mail dated June 30, 2003, 9:16 a.m., from Connie Tonsor to Joel Johnson and Deborah Williams.

Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to the assigning of the Agency attorney and the Agency did not rely upon this information in making its final decision.

29. E-mail dated October 21, 2003, 9:49 a.m., from Jeb McGhee to Chris Kallis, with Attachment A revised.

Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to discussion of a reported violation and the Agency did not rely upon this information in making its final decision.

30. E-mail dated December 4, 2003, 10:24 a.m., from Bonnie Carter to Renee Cipriano.

Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to discussion of who should pay for pre-testing and pretreatment and the Agency did not rely upon this information in making its final decision.

31. E-mail dated December 30, 2003, 3:20 p.m., from Al Keller to Karen Cox.

Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to a weekly status report of the Agency and the Agency did not rely upon this information in making its final decision.

32. E-mail dated January 20, 2004, 10:58 p.m., from Toby Frevert to Marcia Willhite.

Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to a news clipping on Minnesota rulemaking and the Agency did not rely upon this information in making its final decision.

33. E-mail dated March 8, 2004, 8:57 a.m., from Chris Kallis to Al Keller and others.

Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to reported violations at Town & Country-Liberty Lakes and the Agency did not rely upon this information in making its final decision.

34. E-mail dated April 13, 2004, 3:43 p.m., from Bonnie Carter to Renee Cipriano.
Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to a request for status update on the Wauconda permit application and the Agency did not rely upon this information in making its final decision.
35. E-mail dated April 16, 2004, 3:00 p.m., from Connie Tonsor to Jerry Kuhn and Roger Selburg.
Agency response: Attorney-client privilege document.
36. E-mail dated May 10, 2004, 8:21 a.m., from Renee Cipriano to Toby Frevert.
Agency response: Attorney Client privilege document.
37. Draft Guidance for Submittal of Surface Water Data.
Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to draft guidance for submittal of surface water data and the Agency did not rely upon this information in making its final decision.
38. E-mail dated July 8, 2004, 10:46 a.m., from Bruce Yurdin to Karen Cox and Marcia Willhite.
Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to status reporting on Fiddle Creek and the Agency did not rely upon this information in making its final decision.
39. E-mail dated February 26, 2004, 3:16 p.m., from Dennis McMurray to Renee Cipriano.
E-mail dated February 26, 2004, 3:13 p.m., from Roger Callaway.
E-mail dated February 26, 2004, 1:33 p.m., from Dennis McMurray.
E-mail dated February 26, 2004, 12:59 p.m., from Mike Garretson.
Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to violation notice discussions with Compliance Assurance Section and the Agency did not rely upon this information in making its final decision.
40. Memorandum dated February 20, 2004, from Chris Kallis to Roger Callaway.
Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to violation notice discussions with Compliance Assurance Section and the Agency did not rely upon this information in making its final decision.
41. E-mail dated May 13, 2004, 2:06 p.m., from Jeb McGhee to Roger Callaway and others.
Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to violation notice discussions with Compliance Assurance Section and the Agency did not rely upon this information in making its final decision.

42. Letter (unsigned) dated May 13, 2004, from Michael Garretson to Dan Quick.
Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to Compliance Assurance Section's addressing the rejection of a compliance commitment agreement and the Agency did not rely upon this information in making its final decision.
43. Letter (unsigned/not dated), from Renee Cipriano to Bharat Mathur.
Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to Part 620 of the Board regulations discussion and the Agency did not rely upon this information in making its final decision.
44. Memorandum dated March 11, 2004, from Chris Kallis to Roger Callaway.
Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to Town & Country-Liberty Lakes compliance updates and the Agency did not rely upon this information in making its final decision.
45. E-mail dated September 25, 2003, 2:33 p.m., from Tim Kluge to Toby Frevert and others.
Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to Compliance Assurance Section inspection reporting and the Agency did not rely upon this information in making its final decision.
46. E-mail dated October 1, 2003, 11:37 a.m., from Tim Kluge to Toby Frevert.
Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to discussion of reported digester foaming incident and the Agency did not rely upon this information in making its final decision.
47. E-mail dated October 22, 2003, 9:18 a.m., from Renee Cipriano to Roger Callaway and others.
E-mail dated October 20, 2003, 9:12 a.m., from Connie Tonsor.
Agency response: Pursuant to Section 105.212(b) of the Board regulations, this document is not released because it is related to the Attorney General Office's request for additional information on the reported overflow incident and the Agency did not rely upon this information in making its final decision.

From: Chris Kallis
To: Frevert, Toby; Gunnarson, Charles; Hammel, Bill; Keller, Al; Kluge, Tim; Mosher, Bob; Willhite, Marcia
Date: 7/31/03 3:32PM
Subject: Wauconda meeting

Here are my notes on the Wauconda meeting at the AGO. As a follow-up I recommend the following :

1. DLC should evaluate the allegation of the NPDES Permit application omitting required information.
2. Permits Section should review the data submitted by the Wauconda Task Group. I noted that there were some traces of Poly Aromatic Hydrocarbons but not those that mentioned of being of major concern by the citizens. One thing I did note in my cursory review was that Iron was extremely high as expected and so was the Boron. The one thing that may be of concern is that the Boron concentrations almost always significantly exceed Wauconda's rather stringent ordinance limit. What little I know about Boron is that it usually passes through the plant and Wauconda discharges to a zero flow stream. If the effluent and downstream exceeds 1 mg/l, its a violation. That's why I had out sampling tech sample for metals and Boron recently.

From: Rick Cobb
To: Cipriano, Renee; Frevert, Toby; Willhite, Marcia
Date: 6/13/2003 9:50:27 AM
Subject: Re: Wauconda

Toby, please see the attached. This is the citizens group that I had some extensive dialog with in regard questions that they had in regard to groundwater, drinking water and waste water.

Rick

Richard P. Cobb, P.G.
Deputy Manager
Division of Public Water Supplies
Bureau of Water
Illinois EPA
Phone & Voice Mail: (217) 785-4787
Fax: (217) 557-3182
E-mail: rick.cobb@epa.state.il.us

>>> Renee Cipriano 06/13/03 09:42AM >>>

I received a very concerned call from a good friend of mine regarding n NPDES permit that is pending for the Village of Wauconda. The permit number is IL0020109 and is for an increase in discharge, I understand, from 4 million to 8 million into a tributary to Lake Lakeland and Slocum Lake (and ultimately the Fox Lake) called Fiddle Creek. Apparently, we had recently (I think within the last couple of years) allowed Wauconda and exemption for effluent disinfection for this same discharge.

There are many homes (approximately 100) in this area that are on private wells. My friend purchased a home in the Robert Bartlett Lakeland Estates and all of the homes in that subdivision are on private well water and are located along Fiddle Creek. Some of the neighbors have had their wells tested and the test have revealed high levels of fecal. Additionally, I am told, people and children play in these waters and fish in these waters. As you can imagine the neighbors are beside themselves. They have contacted Senator Peterson and Rep Beaubien. They are concerned that the permit will issue without their chance to share their concerns. They are also concerned with the no effluent disinfection decision that was made. At minimum, they want a hearing on the permit during the evening hours (after 6:00 pm.). Could someone please brief me on this matter and also let me know if we were aware of the private well situation? Monday is fine although I do not want the permit to issue before we have the chance to discuss. thanks

CC: Callaway, Roger; Cox, Karen; Elzinga, Sherrie; Gunnarson, Charles; Keller, Al; Killian, Bernie; Mosher, Bob; Pickens, Jessica

From: Marcia Willhite
To: Bruce.Yurdin@epa.state.il.us, Gregg.Good@epa.state.il.us, Toby.Frevert@epa.state.il.us
Date: Fri, Jun 25, 2004 11:28 AM
Subject: Re: Fiddle Creek

I agree that setting up criteria and informing folks ahead of time is most desirable. Agency rules would probably be best.

Marcia T. Willhite
Chief

Bureau of Water
217/782-1654

marcia.willhite@epa.state.il.us

>>> Bruce Yurdin 06/23/04 2:40 PM >>>

You're lurching toward rulemaking, which in this case may not be a bad idea. Simple Agency rules could be done relatively quickly for the 2006 IR. The trick would be to keep them simple and away from data quality issues (recall the problems with data quality laws in Iowa, Arizona, etc., most of which dealt with data age). I also suggest you revise the too rigid time frame, as in "Data packages will be accepted through May 1, 2005." Make the rule applicable to whatever year we want, as in "Data packages will be accepted through May 1 of the year prior to Integrated Report submittal."

If we stick with May 1 as the submittal date, rules will need to be drafted, vetted by a workgroup, published and approved by JCAR by late March--early April of 2005.

bjy

Bruce Yurdin
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phone 217/782-3362
fax 217/785-1225

>>> Gregg Good 6/23/2004 12:11:30 PM >>>

For our next report, the 2006 Integrated 305(b)/303(d) report, I have drafted a policy regarding the who's, what's, where's, when's, and why's of submitting "outside data" for use in that assessment/listing process (see attached draft). This draft was developed to meet data solicitation guidance from USEPA. Basically, ISAPI wants to insure that states let outside entities know that we are required and will review (not necessarily use) "readily available data."

Personally, I am opposed to any routinely used "mid-term" listing process. I believe we need to finalize the attached, send it out to those we work with on a daily basis, send out a news release regarding it's availability, and put it on our website so that all of Illinois knows our requirements for using outside data in our ultimately regulatory 303(d) program. It should be clear, simple, and if the data requirements aren't met, so be it. This is my biased monitoring/science (we must have a cutoff date) perspective!

However, like Toby suggests, I do believe that we have the obligation of reviewing and considering outside data provided to us almost anytime, especially during a formal 303(d) comment period on a hot-button issue like Lake Barrington/Wauconda/Fiddle Creek. We shouldn't automatically discount the data only on the basis that it wasn't QAPPED. In this case, we should say "thanks for the information; we need to investigate your claim further," and in Fiddle Creek's case, "we'll do some follow-up monitoring of our own." On the other hand, we shouldn't and CAN'T just take outside data at face value. We need to know the objectives of monitoring programs, how data was gathered, how it was analyzed, etc., before we can use it. This takes time. If our objective is to find D.O. violations to prove a CWA violation, we can find them if we simply monitor at i.e., 6:30 a.m. That objective is totally different than if our objective is to

collect appropriate data, for passage through IEPA assessment/listing methodologies, to get something on or off the 303(d) list for any of a number of the uses that we assess.

Ultimately, if data is submitted to us "way after the fact," but we ultimately find it credible after investigation, we can and should use it in the NEXT listing cycle.

>>> Marcia Willhite 6/23/2004 10:42:57 AM >>>

Can we modify a 303(d) list at any time? List something, for example? That may be our approach here. Do our own work to further evaluate and assess, then initiate a "mid-term" listing process, if appropriate.

Marcia T. Willhite
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>>> Toby Frevert 6/23/2004 10:30:53 AM >>>

My take on this matter is that we have information from outside parties and an assertion that Fiddle Creek exceeds applicable WQS and may be impaired to some degree. Irrespective of the veracity of the QAPP associated with the info we cannot merely disregard it. The logical response is to view the situation as indeterminate and warranting additional monitoring on our part. We have already started with a visit to the creek yesterday and will be doing additional data collection in the future. We will probably also require Wauconda to conduct stream monitoring as well through a permit condition.

>>> Bruce Yurdin 6/22/2004 10:02:24 AM >>>

Based on a short talk with Al and another with Lalit, I assume a decision was made on 6/17/04 that the data submitted by the Village of Lake Barrington in response to the draft 2004 303(d) List would not be accepted and that Fiddle Creek would remain unassessed. If this is the case, Fiddle Creek would not be added to the 2004 List.

The unacceptability of the data seems to have focused on the lack of a QAPP, and not on the data proper. If this is the case, we have precedent to the contrary made during the public participation process for the 2002 List. How we arrived at the Fiddle Creek decision in the face of a previous, opposing determination will need to be clarified for the responsiveness summary. On the other hand if the lack of a QAPP was not the basis for our decision, we will need to have Wally or staff review the data and document why impairment has not been identified. In either case we will need a written record of the decision for the responsiveness summary and subsequent discussions with Region 5 on this matter.

bjy

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CC: Al.Keller@epa.state.il.us,Lalit.Sinha@epa.state.il.us,Mike.Henebry@epa.state.il.us

From: Lalit Sinha
To: Frevert, Toby; Good, Gregg; Willhite, Marcia; Yurdin, Bruce
Date: Wed, Jun 23, 2004 2:44 PM
Subject: Re: Fiddle Creek

What is the purpose of holding a public hearing if the Agency is not going to be truly responsive to comments and data and information provided by public during this process?

>>> Gregg Good 6/23/2004 12:11:30 PM >>>

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From: Blaine Kinsley
To: Tonsor, Connie
Date: Tue, Sep 23, 2003 4:17 PM
Subject: Re: Wauconda

Upon further review of 40 CFR 122.62, I agree with your determination of the need for major modification to remove the disinfection exemption.

>>> Connie Tonsor 09/23/03 03:23PM >>>

Attached is a draft of the "**immediate**" modification options. As indicated at the meeting, I **do not** believe that we can eliminate the chlorine exemption without going through notice, etc. This would be a change in a substantive condition and thus would be a major modification. This would not be sensiblen timewise since it is proposed for elimination with the permit modification currently in post hearing comment.

However, we could with a little slight of hand and the cooperation of the permittee modify to increase monitoring to reflect the chlorination and as for fecal samples pending the issuance of the modified permit.

All correction and criticism accepted.

From: Chris Kallis
To: Cipriano, Renee; Frevert, Toby; Keller, Al; Willhite, Marcia
Date: 10/17/03 9:41AM
Subject: Re: Wauconda

It just so happens that I talked with Mr. Devry two days ago on another matter. He did discuss the problems he had with the content of my memo. One was using the Lake County Health Department sampling data which showed high fecal coliform in the Bangs Lake Drain. He complained that LCHD did not take an upstream sample at the Bangs Lake overflow and that there some rain the night before. I found that complaint quite curious since Wauconda sewers entirely surround Bangs Lake. Nonetheless, I informed that Wauconda was not cited for fecal Coliform violations since standards are based on geometric mean. The sampling results were included in support of the LCHD stream site assessment (which we routinely have them do for us by contract) as a follow-up to this incident and was used in support of the evidence I contributed.

He also had problems with my comments on the lack of industrial monitoring. I reminded him that similar incidents happened before and the Village did not have a clue on how to track it down before their was never any field confirmation on the industrial survey which they conducted by mail. It is a weak system when an outsider who has never seen the survey points them in the right direction. He countered that this could have happened if they were on the pretreatment program. I countered that it would be highly unlikely that a company would dump a slug load if they were aware of an ordinance which the likely culprit didn't. They would be even less likely if they would be willing top enforce which we know they are not. He disputed my statement that the Village does not have a handle on when industries move in, which was a concern expressed by the POTW staff. He said the building department knows when a industry hooks up. I asked do they inform the POTW. He could not answer. I asked if the building would know if an electroplater moved in the rental industrial park. He could not answer.

If anyone has a problem with the content of my findings let me know. In the meantime I got a phone message and E mail from Howard Chin of the IAGO. He wants a copy of the Village Ordinance.

>>> Al Keller 10/16/03 05:12PM >>>

I talked with Bob Devery, village consultant, today about the letter I sent to the village and him concerning the disinfection exemption withdrawal letter we requested from the village. Devery's main question was what was our definition of primary contact. He thought we were changing our definition to fit Wauconda's situation. I said first of all we are not changing any rules to fit Wauconda's situation. I said the letter expressly said potential for primary contact and that was due to a change in the situation with housing developments near the stream. I stated there was more of a potential for kids to play in or near the stream. I acknowledged that it is not directly adjacent to the houses but there were actual paths leading to the stream area. He wanted to discuss boating, skiing and swimming in this 6 inch deep creek but I stated wading was a subset of swimming activities and there was a potential for contact with kids wading or playing near streams. I advised we knew there was not going to be any boating or swimming but there can be contact thru wading. He finally somewhat agreed with me.

He also inquired what other issues may be included with the disinfection exemption withdrawal. He asked if nutrient removal or other special designations would be included. I said I thought we were pretty clear that we were only looking at the one issue. The withdrawal would only include requiring disinfection and including a fecal coliform limit in the existing permit. That would be all it would include. All other issues would be addressed in the responsive summary for the stp expansion modification. He again asked if it would slow down the other request and I said no.

He again advised that the village would have to decide on the issue and there meeting was Monday. (The village attorney advised me that the meeting was next Tuesday) Devery asked how soon would we want any letter. I said we wanted it ASAP and actually wish we already had the letter. He said he understood the urgency.

I also talked to Rudy Magna, attorney for the village, and discussed 4 items. They were:

1. disinfection exemption withdrawal letter

2. joint press release
3. comments on his draft letter to Toby
4. changes to Agency memo and protocol.

Concerning the first 2 items, I first told him I had expressed to Bob Devery that the Agency wishes to receive the letter asap after the meeting and that we had hoped to have it sooner. I further expressed to him that there were no hidden agendas and no other issues included with this. It only requires full time disinfection and incorporation of a fecal coliform number in the permit. I said the Agency was still interested in a press release. He understood the issue and will discuss at the village board meeting.

Concerning item 3, I advised that we actually had no comments on their letter. Magna discussed the whole issue about rules for the committee, hidden agendas, the trust issue, timing of the project team, etc. I said why don't you propose some rules for the committee and also advise us what you want the committee to discuss. I said the draft letter articulated more problems with the project team and what you didn't want to discuss. I said maybe you want to show a more positive side at what you want to have the team discuss and offer some rules. He said he would consider that and will finalize the letter.

Concerning item 4, he asked how he could get us to change any correspondence specifically Chris' memo on the foaming incident. He said the village feels there were some inaccuracies in the memo. I said he needs to express them to Chris and if they want to document anything, they should do it by letter. He inquired about how they got the letter from Bonnie T-C. I said that Bonnie sent in a FOIA request and received the memo in that fashion. He understood that ok and inquired why didn't proper authorities receive copies of reports on their facilities. I advised him we are going to review our present policy on that issue and he was ok with that response.

I said thanks and we will be talking to him and the village officials.

CC: Kluge, Tim; Netemeyer, Don; Patel, Jay

STATE OF ILLINOIS)
)
) SS
COUNTY OF SANGAMON)
)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached **RESONSE TO MOTION FOR SANCTIONS AND TO COMPEL** upon the person to whom it is directed, by placing a copy in an envelope addressed to:

Dorothy Gunn, Clerk
Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

(OVERNIGHT MAIL)

Percy L. Angelo
Russell R. Eggert
Kevin G. Desharnais
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(OVERNIGHT MAIL)

and mailing it from Springfield, Illinois on January 7, 2005, with sufficient postage affixed as indicated above.

[Handwritten signature]

SUBSCRIBED AND SWORN TO BEFORE ME

this 7th day of January, 2005.

Vicky Vonlanken

Notary Public

